

STATE OF NEW MEXICO  
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT  
OIL CONSERVATION DIVISION

CASE 10,635

EXAMINER HEARING

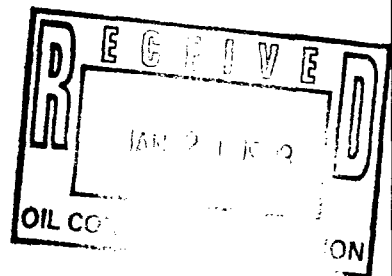
IN THE MATTER OF:

Application of Mewbourne Oil Company for  
compulsory pooling and an unorthodox gas well  
location, Eddy County, New Mexico

TRANSCRIPT OF PROCEEDINGS

**ORIGINAL**

BEFORE: DAVID R. CATANACH, EXAMINER



STATE LAND OFFICE BUILDING

SANTA FE, NEW MEXICO

January 7, 1993

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1 WHEREUPON, the following proceedings were had  
2 at 9:11 a.m.:

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6 EXAMINER CATANACH: At this time we'll call  
7 Case Number 10,635.

8 MR. STOVALL: Application of Mewbourne Oil  
9 Company for compulsory pooling and an unorthodox gas  
10 well location, Eddy County, New Mexico.

11 Mr. Examiner, I believe that prior to hearing  
12 this case on the substance of the Application, Mr.  
13 Kellahin at one point filed a motion to dismiss. I  
14 think at the last hearing we determined that we would  
15 not act on that motion to dismiss.

16 But prior to this hearing he filed a motion  
17 to continue to this case and, as we discussed off the  
18 record prior to the start of the case, I believe that  
19 we need to resolve the motion to continue.

20 If that's granted, it's fine, they've got two  
21 weeks to prepare the case.

22 But if we deny the motion to continue, then I  
23 assume Marathon will spend the rest of this day  
24 preparing the case so that they can come back at the  
25 end of the docket and argue the substance.

1 Is that correct, Mr. Kellahin?

2 MR. KELLAHIN: That's a correct statement.

3 Do you want to call for appearances in this?

4 I don't know that we've ever called the case.

5 MR. STOVALL: I just called it, and gave you

6 that introduction. And right, yes, we need

7 appearances, yeah. I don't think it's ever been

8 called, you're right.

9 EXAMINER CATANACH: Yeah, let's call for

10 appearances at this time.

11 MR. BRUCE: Mr. Examiner, Jim Bruce from the

12 Hinkle law firm in Santa Fe, representing the

13 Applicant.

14 MR. KELLAHIN: Mr. Examiner, I'm Tom Kellahin

15 of the Santa Fe law firm of Kellahin & Kellahin,

16 appearing in association with Mr. Thomas C. Lowry, a

17 member of the Texas Bar. The two of us represent

18 Marathon Oil Company.

19 MR. CARR: May it please the Examiner, my

20 name is William F. Carr with the Santa Fe law firm

21 Campbell, Carr, Berge and Sheridan. I would like to

22 enter our appearance in this case on behalf of Devon

23 Energy Corporation.

24 We do not intend to participate in this case

25 by calling witnesses.

1 MR. STOVALL: Being a motion to continue the  
2 case, I guess it's Mr. Kellahin's motion so he has the  
3 pleasure of going forward and arguing in support of his  
4 motion.

5 Is this going to be purely on argument, or  
6 are there going to be some factual issues to be placed  
7 in the record on the motion to continue?

8 MR. KELLAHIN: I'll do my best to state what  
9 I think are the key factual elements, subject to Mr.  
10 Bruce's agreement, and then to argue my position.

11 MR. BRUCE: I wasn't planning on presenting  
12 any, but frankly, I don't see how this can be decided  
13 without a rundown of the contacts between Mewbourne and  
14 Marathon.

15 MR. STOVALL: I suggest that maybe what we  
16 do, then, is let's get Mr. Kellahin to do his summary  
17 and argument, and then you can respond to that, Mr.  
18 Bruce.

19 I've got some questions, as far as  
20 procedurally, that maybe I'll raise after you do that.  
21 And then we can decide whether to -- I understand what  
22 you're saying about -- you know. If the basis for it  
23 is factual as to communication, then we may need to  
24 build a record on that.

25 But let's start out with the summary.

1           MR. KELLAHIN: To be as concise as I can, Mr.  
2 Examiner, the principal issue is that I believe it is  
3 undisputed and uncontested that Mewbourne apply to the  
4 agency for compulsory pooling prior to specifically  
5 proposing the formation of a voluntary spacing unit for  
6 this well in the east half of 15 and tendering to  
7 Marathon a letter seeking their voluntary participation  
8 in that well, and tendering them an AFE.

9           I think that is a fatal flaw in the process,  
10 and originally had petitioned the Division to dismiss  
11 this case on that basis, that you cannot file to force-  
12 pool a party until you have proceeded to propose the  
13 specific well to them, and they did not do that in this  
14 case.

15           Marathon received notification of the pooling  
16 Application, which was docketed for hearing on the 17th  
17 of December. We received notification of that hearing  
18 the Monday before the hearing. We filed our motion to  
19 dismiss, in which I detailed the chronology of events  
20 as I thought them to be.

21           The morning of the hearing, in an informal  
22 conference, Mr. Bruce gave me what he was going to use  
23 as hearing exhibits for this pooling case, in addition  
24 to copies of the hearing exhibits he was going to use  
25 in the next case, 10,636.

1           In review of his exhibits -- I will submit to  
2           you that my statements are unopposed, that in  
3           Mewbourne's proposed Exhibit Number 3 and Exhibit  
4           Number 5, are contained copies of the correspondence.

5           The initial effort by Mewbourne was a  
6           proposal back in October of 1992 to Marathon for a  
7           multi-tract farmout of some 1200 acres of noncontiguous  
8           tracts.

9           After studying that, Marathon declined to  
10          farm out the 1200 acres.

11          The next thing that happens is that on  
12          November 16th, Mewbourne sends out notifications of a  
13          pooling application and that the case has been docketed  
14          for hearing.

15          Thereafter, on the 20th of November,  
16          Mewbourne sends out notices of the unorthodox-location  
17          portion of this case.

18          At no time, before or after, has Mewbourne  
19          tendered to Marathon a written request for voluntary  
20          participation in the spacing unit in the east half of  
21          this section, along with an AFE. And the only way I  
22          know about the AFE is it's contained in the exhibit  
23          package which Mr. Bruce gave me.

24          I asked for a month's continuance in lieu of  
25          a dismissal at the last hearing. Mr. Bruce proposed a



1 two-week continuance, and that's why we're back here  
2 today. The two-week time was over a holiday period,  
3 and we have been unable to complete processing our  
4 position with regards to this case.

5 Mewbourne has proposed to us a farmout in the  
6 interim, and I believe Marathon has declined the  
7 farmout.

8 There are decisions yet to be made about  
9 participation.

10 I just now have located and found a geologist  
11 with Marathon that's available to discuss the technical  
12 aspects of this case. We have not had sufficient time  
13 to resolve this matter, and if I'm forced to go to  
14 hearing today I am totally unprepared.

15 Rather than having the case dismissed, which  
16 is really what should happen as the consequence for  
17 filing a pooling case before you propose the well, I  
18 will be satisfied if you'll give us a two-weeks'  
19 continuance so that I may properly come back and be  
20 prepared to discuss the aspects of this particular  
21 matter, and that's what I'm seeking to do.

22 MR. BRUCE: Well, believe it or not, Mr.  
23 Examiner, I don't agree with everything Mr. Kellahin  
24 said.

25 The first contact regarding this land, this

1 specific tract, was made three months ago. There have  
2 been ongoing discussions.

3 MR. STOVALL: Mr. Bruce, would you put that  
4 in terms of -- Is that October? Is Mr. --

5 MR. BRUCE: October, I believe. I don't have  
6 the exhibit in front of me. I believe it was October  
7 7th or something, the first letter.

8 MR. STOVALL: Okay, I just wanted to --

9 MR. BRUCE: As Mewbourne's landman can  
10 testify, he went out to lunch with Marathon, called  
11 them, never any response.

12 This isn't unusual.

13 There's another well that was currently  
14 spudded -- or recently spudded, the Turkey Tract 15  
15 Number 1 well in the west half of Section 15 offsetting  
16 this well.

17 Mewbourne's first contacts with Marathon on  
18 that well were about a year ago. It was pooled last  
19 summer. Mewbourne continued to try to get Marathon to  
20 do something on that well. They never did a thing.

21 And that has been Mewbourne's experience with  
22 Marathon. Regardless of what they do, Marathon never  
23 does a thing, period.

24 Three weeks ago -- It wasn't two weeks ago,  
25 it was three weeks ago because of the holidays --

1 Mewbourne gave Marathon all of its geology, its AFE,  
2 everything else. They have had discussions since then,  
3 up through yesterday afternoon. They still haven't  
4 been able to come to terms.

5 Basically, it's because Marathon can't make a  
6 decision.

7 In this area, Marathon has been force-pooled  
8 twice by Mewbourne. As I said, time after time after  
9 time there has been no decision on Marathon's part.

10 We believe that the real reason they want an  
11 extra two weeks is by then the Turkey Tract 15 Number 1  
12 well in the west half of Section 15 should be down to  
13 total depth, and of course the next thing we'll get is  
14 the subpoena for the data. They don't want to make any  
15 decision until they've seen everything, even though  
16 they were force-pooled in that well.

17 If it's delayed for two weeks, they could  
18 probably get the data under the current practices of  
19 the Division.

20 But what if that well was going to be spudded  
21 in two weeks? Does that mean Mewbourne's case should  
22 be continued for six weeks, et cetera, et cetera? I  
23 don't think that's the way this is supposed to go, this  
24 is the way this is supposed to happen.

25 Basically, Marathon wants the data from the

1 offsetting well before they can make a decision, if  
2 they can make a decision.

3 We are ready to put on our case. We think  
4 our land testimony supports the fact that we have  
5 negotiated in good faith for the requisite time period,  
6 and we think it's ridiculous to continue this case.

7 Marathon has had its lease in this area since  
8 1984. It has never done a thing. It's only at the  
9 instance of Mewbourne, which has a number of wells  
10 drilling in this general area, that any of these wells  
11 are being drilled, and we think we should go forward  
12 today.

13 MR. KELLAHIN: Quick rebuttal, Mr. Examiner.

14 Mr. Bruce has not refuted my basic point.  
15 There is no communication from Mewbourne to Marathon  
16 whereby they specifically propose the well and send us  
17 an AFE before they initiate the pooling.

18 MR. BRUCE: Yes.

19 MR. KELLAHIN: It is not Marathon's fault  
20 that they've got the sequence out of order. It's not  
21 the Division's fault that they're doing this wrong.

22 The relief I see is simply a continuance, and  
23 I think I'm entitled to that.

24 The only letter in here that predates the  
25 filing of that Application is this October 7th, 1992,

1 letter in Mr. Bruce's package, and it's the 1200-acre  
2 proposed multi-tract farmout. And based upon the  
3 inability to reach terms on that, they ambush us with a  
4 pooling application. That's inappropriate, Mr.  
5 Examiner.

6 MR. BRUCE: There was -- If I may rebut,  
7 there were other discussions, and there is nothing  
8 anywhere that requires an AFE to be sent. They've had  
9 the AFE for three weeks.

10 MR. STOVALL: Mr. Bruce, let me ask you a  
11 question on one point that you raised.

12 You raised the question of waiting for the  
13 Turkey Tract well to get down. Presumably that may be  
14 Marathon's underlying motivation.

15 If in fact this case were heard today,  
16 presumably it would be two to four weeks before an  
17 order were issued, and then Mewbourne would have to  
18 send out an AFE.

19 Would that not sort of negate that argument  
20 that timing is critical? It's going to be at least  
21 that amount of time before Mewbourne can drill the  
22 well, and the Turkey Tract well will be down before  
23 then; is that not correct?

24 MR. BRUCE: That's correct.

25 MR. STOVALL: And at that time -- And whether

1 it's a decision to participate in the force-pooling or  
2 a decision to participate in the well, Marathon would  
3 have access to that information before it made a  
4 decision to write a check; is that...

5 MR. BRUCE: I'm not quite sure what you're  
6 getting at. I don't think necessarily that Mewbourne  
7 is obligated to give Marathon any information on the  
8 well that it's drilling now.

9 MR. STOVALL: Another question, probably more  
10 important, of broader significance, and let me ask both  
11 of you.

12 First, the preliminary question is, Is there  
13 anything at this point at issue with respect to the  
14 substantive force-pooling case -- i.e., penalty, costs,  
15 administrative costs or location -- that needs to be  
16 resolved by the Division in determining -- in entering  
17 an order?

18 MR. KELLAHIN: Oh, absolutely. One of the  
19 fundamental issues is the well location. They've  
20 sought an unorthodox location.

21 From a layman's look at their geologic  
22 displays, they have got a narrow Morrow channel running  
23 northwest to southeast on a little narrow channel, and  
24 I need time for my geologist to examine whether or not  
25 that's the optimum place to put this well.

1           So well location is critical on Marathon's  
2 decision on participation.

3           It also is an issue with regards to what the  
4 risk factor is, with regards to how you minimize the  
5 risk involved in the pooling, on where you locate the  
6 well.

7           In addition, I believe, from looking at the  
8 Application in the docket, they're asking to pool  
9 multiple zones. It appears to me that there is a  
10 discussion to be had on whether or not there ought to  
11 be split risks, multiple opportunities to elect in  
12 different horizons and a whole bunch of issues.

13           Further, I would like to see some decision  
14 made by this Division with regards to a joint operating  
15 agreement, which they've never suggested to us or  
16 submitted, because if this is a pooling case, I want  
17 some of the Article 6 protections in the joint  
18 operating agreement to protect me from subsequent  
19 operations when they take this Morrow dry hole and want  
20 to come back uphole to some other formation.

21           So we can spend two or three days on this  
22 case, and we can either do it now or we can get  
23 organized and come back and do it more efficiently in  
24 two weeks.

25           MR. STOVALL: All right. That leads me to

1 the second question, then, which is specifically  
2 relevant to the motion to dismiss. That is based upon,  
3 as I understand the presentation of it, an issue which  
4 also could be fundamental to the determination of  
5 whether a force-pooling order should be granted or not,  
6 that is, whether there have been reasonable  
7 negotiations.

8 Is that a correct statement, that the issue  
9 of whether -- the factual, evidentiary questions which  
10 would be raised on the motion to dismiss would be the  
11 same sort of factual, evidentiary questions which could  
12 be raised in opposition to the Application itself?

13 MR. KELLAHIN: Yes, sir, and I'm willing to  
14 waive that issue about a fair opportunity for complete  
15 negotiations, in exchange for a two-week continuance  
16 where I can assure myself that those opportunities have  
17 been exhausted, because without it I am not satisfied  
18 that they have been exhausted, despite what Mr. Haden  
19 may be moaning about here in the hearing room.

20 The fact is, they haven't taken place, and we  
21 need time to fulfill that expectation, in addition to  
22 looking at preparing to oppose this case, if that is  
23 the end result.

24 MR. BRUCE: There's been three months'  
25 negotiations. How much more --



1 MR. STOVALL: No, not the fact- -- I don't  
2 want to -- Let's not argue that factual point, Mr.  
3 Bruce.

4 I'm simply asking the question, Are those  
5 facts as relevant to the substantive issue of whether  
6 there's been good-faith negotiations as they are to  
7 whether the case ought to be continued for two weeks?

8 In other words, if you put on that -- if --  
9 Let me tell you where I'm coming from. At this point  
10 in the thing, in the argument, my inclination would be  
11 to say, Okay, Mr. Kellahin has made a motion based upon  
12 essentially Mewbourne's failure to conduct good-faith  
13 negotiations, to give Marathon the opportunity to make  
14 a decision with respect to the well.

15 Now, that is a fundamental -- I agree with  
16 him that that's a fundamental requirement of a force-  
17 pooling. I'm not accepting the factual statement, I'm  
18 just identifying the issue.

19 If the factual issues are put on in the  
20 context of a motion to dismiss, could we not use those  
21 same facts to make a determination whether the force-  
22 pooling is appropriate or not?

23 MR. BRUCE: They are inter-related. I don't  
24 know how you can separate them. One may have bearing  
25 on the other, yes.

1 MR. STOVALL: And where I'm coming from on  
2 this, again without prejudging the facts, but making  
3 some -- for just analysis' point of view, if we were to  
4 hear a factual argument -- And I'm inclined to think  
5 that that is the issue and that we may have to have  
6 some facts to make that determination.

7 But if we were to hear those facts and decide  
8 them against Mewbourne, that Mewbourne had in fact not  
9 conducted those negotiations, could the Division not  
10 deny the Application and say, Go back and do it again  
11 and start over? Or can --

12 MR. BRUCE: I suppose that's in the  
13 discretion of the Commission. I don't -- The facts  
14 don't support it, but I mean --

15 MR. STOVALL: Well, I'm not agreeing that the  
16 facts support it. That's not my point. I'm saying if  
17 we were to find they did. I don't make any conclusion  
18 as to the facts.

19 I assume Mr. Haden is going to testify that  
20 there were good-faith negotiations conducted, and  
21 Marathon has stalled and refused to -- And that may be  
22 the case, we may find that.

23 MR. BRUCE: As I think you've pointed out  
24 before, a dismissal -- We'd go refile it immediately,  
25 and we'd be back here. I don't know what we'd gain by

1 it.

2 MR. STOVALL: But it would be four to six  
3 weeks, as opposed to two weeks, I guess, is what I'm...

4 And I guess the question is, how strongly --  
5 I mean, if you feel the facts support you, then let's  
6 proceed to hear the facts in the context of -- the land  
7 facts, the negotiation facts, in the context of the  
8 motion to dismiss, and then make that determination.

9 But it would be at the risk, potential risk  
10 that the Division could say, Wait a minute, Mewbourne  
11 has not conducted negotiations, and we'd dismiss the  
12 Application.

13 And please understand that I am not  
14 prejudging those facts; I'm merely stating what I  
15 perceive to be an issue. And I understand and can  
16 accept the fact that -- You know, we also take the  
17 position that a company stalling on making a decision  
18 is not a basis for arguing that they didn't get an  
19 opportunity.

20 So the other side of it is, I could say, you  
21 know, we could rule yes, Mewbourne has made a good-  
22 faith effort to negotiate, and let's proceed, and  
23 Marathon, you should have been prepared to --

24 MR. BRUCE: Well, you know...

25 MR. KELLAHIN: Before you decide, can we have

1 a short break?

2 MR. STOVALL: That's what I was coming to.  
3 Did you want to say something else before that?

4 MR. BRUCE: Well, one final thing. I mean,  
5 three weeks ago we gave them all of our geology and  
6 everything else with the understanding that there would  
7 be no dismissal and that we'd continue it for three  
8 weeks, and then we'd come back here.

9 MR. STOVALL: Yeah, I understand, and I -- I  
10 guess what I'm asking you, Mr. Bruce -- and I'm  
11 suggesting that the break might be a good idea -- is  
12 that I perceive that as being a potential -- I mean, I  
13 think there's a crucial issue here, and whether it goes  
14 to a motion to continue or to a denial of the  
15 Application in chief -- Why don't you take a few  
16 minutes and talk to your people and make sure you're  
17 comfortable with your evidence, and then let's proceed  
18 without prejudging it, because I think Mewbourne is the  
19 party at risk in this case.

20 MR. KELLAHIN: Let me suggest this: I will  
21 withdraw from all this conversation about good-faith  
22 negotiations if I can have two more weeks to get this  
23 ready, and then we'll talk about the technical aspects  
24 of the well location, the geology, and those things you  
25 want to decide, and we will have gone beyond whether

1 the parties have had enough time.

2 I would rather this case be decided on the  
3 technical merits and not on who did what to whom and  
4 how long it took to do it.

5 MR. STOVALL: In other words, we'd stipulate  
6 as to the land testimony, in effect, as what you'd say  
7 is that, yes, there have been good-faith negotiations;  
8 now let's decide what we -- on what terms there should  
9 be pooling. Is that your correct, Mr. Kellahin?

10 MR. KELLAHIN: That's my position, Mr.  
11 Examiner.

12 MR. STOVALL: Are there other parties to be  
13 pooled besides Marathon?

14 MR. BRUCE: Yeah, there's several.

15 MR. STOVALL: Okay. But I assume that that  
16 could be --

17 MR. CARR: May it please the Examiner, the  
18 Application also is styled so as to be pooling the  
19 interests of Devon.

20 Devon and Mewbourne have a question as to the  
21 effect of an operating agreement. We're trying to  
22 resolve that with Mr. Bruce at this time.

23 MR. STOVALL: The effect of an existing  
24 operating agreement, Mr. Carr?

25 MR. CARR: Sir?

1 MR. STOVALL: The effect of an existing  
2 operating agreement?

3 MR. CARR: Yeah, that's my understanding.

4 MR. STOVALL: Well, you're not presenting any  
5 witnesses?

6 MR. CARR: No, I'm not.

7 MR. STOVALL: So I guess that's not going to  
8 be an issue for us to resolve.

9 I would suggest, Mr. Examiner -- I think  
10 we're at an appropriate break time anyway. My  
11 suggestion for the way to proceed with this would be to  
12 take a break, let particularly Mr. Bruce confer with  
13 his clients.

14 I think, in order to -- For anybody to  
15 proceed, we've got to come back here and essentially  
16 hear the land testimony for the case, unless they reach  
17 an agreement on a continuance, and then make a decision  
18 on whether to grant a continuance or not, based upon  
19 the land testimony, and then proceed.

20 Would you agree, Mr. Kellahin, that that's  
21 how we've got to go?

22 MR. KELLAHIN: That looks like the option.

23 MR. STOVALL: Mr. Bruce?

24 MR. BRUCE: Yes.

25 MR. STOVALL: And please don't take my

1 comments as trying to give you a hint as to which way  
2 to go, Mr. Bruce. I'm merely raising the issue, I'm  
3 trying to make you aware of what I could consider to be  
4 the risks or the -- not the risks, the matters to be  
5 considered by the Division on the motion to dismiss.

6 So this essentially will be a bifurcated case  
7 if we...

8 Any other comments or thoughts? I mean, is  
9 that the direction to go as far as you're concerned?

10 MR. KELLAHIN: There's a short way and a long  
11 way, Mr. Examiner.

12 MR. STOVALL: Well, I know how you want to go  
13 the short way, I understand.

14 EXAMINER CATANACH: All right. Well, let's  
15 take ten minutes, and maybe we can come up with  
16 something.

17 (Thereupon, a recess was taken at 9:35 a.m.)

18 (The following proceedings had at 9:54 a.m.)

19 EXAMINER CATANACH: I assume no agreement was  
20 reached during the break?

21 MR. KELLAHIN: Did we agree on anything?

22 MR. BRUCE: I don't think so, Mr. Examiner.

23 MR. KELLAHIN: We didn't agree on anything.

24 EXAMINER CATANACH: Okay. I guess at this  
25 point we need to get Mr. Haden on the stand and

1 evaluate the land testimony.

2 MR. STOVALL: I think, Mr. Examiner, given  
3 the context of what we're saying, is that we probably  
4 need to do both sides' land testimony and then make a  
5 determination on the motion to continue; is that  
6 correct? Is that --

7 MR. BRUCE: I believe so, and I will limit  
8 the testimony. I've got a big package of exhibits, but  
9 I will limit it to --

10 MR. STOVALL: -- to the Marathon issues; is  
11 that what you're saying?

12 MR. BRUCE: -- to the Marathon issues and to  
13 the specifics on the negotiations. So I won't be  
14 introducing all the exhibits I have.

15 MR. KELLAHIN: It will be a one-way  
16 conversation. I don't have a landman, so it will be  
17 Mr. Haden.

18 MR. STOVALL: Okay.

19 MR. BRUCE: Actually, I may have a second  
20 very brief witness also, Mr. Ken Waits, so if they  
21 could be sworn in --

22 MR. STOVALL: Let's go ahead and swear all of  
23 the witnesses at this time, just in case we go forward  
24 with it.

25 (Thereupon, the witnesses were sworn.)



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PAUL HADEN,

the witness herein, after having been first duly sworn  
upon his oath, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. BRUCE:

Q. Would you please state your name and city of  
residence for the record?

A. My name is Paul Haden. I live in Midland,  
Texas.

Q. And who are you employed by and in what  
capacity?

A. I'm employed by Mewbourne Oil Company in the  
capacity of petroleum landman.

Q. And have you previously testified before the  
Division as a landman?

A. Yes, I have.

Q. And are you familiar with the land matters  
involved in this case?

A. Yes, I am.

MR. BRUCE: Mr. Examiner, I tender Mr. Haden  
as an expert petroleum landman.

EXAMINER CATANACH: Mr. Haden is so  
qualified.

Q. (By Mr. Bruce) And in this case, Mr. Haden,  
Mewbourne is seeking to force-pool several parties, one

1 of whom is Marathon Oil Company; is that correct?

2 A. That's correct.

3 Q. And Mewbourne has proposed a Morrow test  
4 well; is that correct?

5 A. That's also correct, in the east half of  
6 Section 15 of Township 18 South, Range 28 East in Eddy  
7 County, New Mexico.

8 Q. And you're asking for a pooling of 40-, 80-,  
9 160-, and 320-acre units; is that correct?

10 A. That's correct.

11 Q. Now, very briefly, Mr. Haden, Exhibit 4,  
12 Mewbourne Exhibit 4, I believe, lists the uncommitted  
13 Marathon acreage?

14 A. Exhibit 4 is a listing of the spacing unit  
15 ownership as to operating rights in the east half of  
16 Section 15, as to rights from the base of the San  
17 Andres formation to the base of the Morrow formation.

18 As depicted in this exhibit, it shows  
19 Marathon Oil Company as owning an interest in the  
20 southeast quarter, also the north half of the northeast  
21 quarter, the southeast of the northeast quarter.

22 Q. Okay. Now, let's get into your contacts with  
23 Marathon, and in going through these exhibits just  
24 limit your discussion to Marathon.

25 Referring to Exhibit 5, there's a letter

1     dated October 7th, 1992, toward the end of the packet,  
2     addressed to Marathon. Would you discuss what you  
3     requested by that letter?

4             A.     The October 7th, 1992, letter is a multi-  
5     tract farmout letter. There are lands in various  
6     townships, in Township 17 South, Range 28 East, and  
7     also in Township 18 South, Range 28 East, which  
8     includes this acreage in Section 15.

9             Q.     And that acreage is listed on Exhibit A to  
10    that letter; is that correct?

11            A.     That's correct.

12            Q.     Okay. Now, after that letter did you call  
13    Marathon?

14            A.     Yes, I had called Randal P. Wilson, a  
15    certified professional landman with Marathon Oil  
16    Company, to discuss the contents of this letter.

17                    He had said that he had heard nothing from  
18    his management as to any sort of decision.

19                    Thereafter, me and our district landman  
20    Steven Cobb, we had lunch with Mr. Wilson.

21            Q.     When was that?

22            A.     This was in November.

23                    We then received a letter from Marathon in  
24    November, dated November 5th, 1992. It lists certain  
25    lease numbers, along with the land descriptions.

1                   In this letter it states, Marathon Oil  
2   Company is in receipt of your letter dated October  
3   8th -- That should have been October 7th, I believe --  
4   1992, in which you request a farmout of Marathon's  
5   interest in the referenced acreage, and the decision  
6   has been made to not farm out any interest at this  
7   time.

8           Q.    Okay. Now, with your original October 7th  
9   letter you didn't provide them an AFE at that time, did  
10   you?

11          A.    No, sir, I did not.

12          Q.    Okay. Did Marathon ever request any AFEs on  
13   any of your specific wells?

14          A.    No, they did not.

15          Q.    Referring a little above in that package,  
16   there's a letter of December 1, 1992. Was that letter  
17   limited to this specific proposed well unit?

18          A.    Yes, this letter dated December 1, 1992, was  
19   limited specifically for the acreage in which we are  
20   force-pooling. It was a letter asking them to  
21   reconsider their previous decision of November 5th,  
22   where they said they would not farm out any interest at  
23   this time.

24          Q.    Did they ever evidence any interest in  
25   joining in any of the well units as a working-interest

1 owner, paying their share?

2 A. They had not, in this land or in any other  
3 land.

4 Q. During this time period, were there also  
5 phone calls back and forth?

6 A. There were numerous phone calls with Mr.  
7 Wilson, some of which would take a while for him to get  
8 back with me. But his only response when he would call  
9 back would be that, I haven't heard from our  
10 management; they have not made any sort of decision.

11 Q. Okay. Now, three weeks ago when we were up  
12 here, Marathon was provided with a package of  
13 Mewbourne's exhibits, including geological exhibits,  
14 for this area; is that correct?

15 A. That's correct.

16 Q. And an AFE?

17 A. And an AFE.

18 Q. And then moving on to Exhibit 5A, what other  
19 contacts have you had with Marathon since that date?

20 A. Okay, under Exhibit 5A, there is a letter  
21 dated --

22 MR. KELLAHIN: Excuse me, I'm not with you  
23 yet, Jim.

24 MR. BRUCE: Okay, I'm sorry. It's a new one.

25 MR. KELLAHIN: I'm sorry, go ahead.

1 THE WITNESS: Okay, under this Exhibit 5A  
2 there's a letter dated December 18th, 1992, wherein I  
3 had sent Marathon Oil Company in Midland, Texas, to the  
4 attention of Randal P. Wilson -- this was by certified  
5 mail, return receipt requested -- I furnished this AFE,  
6 again asked them to join either in drilling of this  
7 proposed well or to farm out.

8 If they were agreeable to join in the well, I  
9 would forward them an operating agreement. This is the  
10 last paragraph of this letter.

11 No response.

12 Q. (By Mr. Bruce) And have negotiations  
13 continued through yesterday, trying to obtain  
14 Marathon's joinder in the well?

15 A. Yes, that's correct. As a matter of fact,  
16 Mr. Ken Waits, our exploration manager, and I went over  
17 to their office December 22nd to see what sort of deal  
18 we could make with them.

19 Q. Okay. Now, there's already been some  
20 discussion. In the west half of Section 15 there's a  
21 well drilling now, is there not?

22 A. That is correct.

23 Q. What is the name of that well?

24 A. That well is named Turkey Tract 15 State  
25 Number 1 well.

1 Q. And was that acreage -- Was that well unit  
2 the subject of a force-pooling order?

3 A. Yes, it was.

4 Q. Was that R-9688?

5 A. Let me check. That's correct.

6 Q. Was Marathon force-pooled in that case?

7 A. Marathon was force-pooled. They elected to  
8 go nonconsent.

9 Q. And you had discussions with Marathon  
10 regarding that well unit, did you not?

11 MR. KELLAHIN: Objection at this time, it's  
12 not relevant to this case, Mr. Examiner.

13 MR. BRUCE: I think it is, to show what  
14 trouble we've had getting any decision from Marathon,  
15 and therefore it goes to whether Mewbourne has made a  
16 good-faith effort in this case.

17 It will only take a minute, Mr. Examiner.

18 MR. KELLAHIN: A minute's unnecessary, Mr.  
19 Examiner. It's not relevant.

20 MR. STOVALL: If we don't go too far into it,  
21 I think it is.

22 Q. (By Mr. Bruce) Just two questions. When do  
23 you recall the first negotiations were?

24 A. That was back in April, 1992.

25 Q. And that Order was entered, and there was an

1 extension granted on that Order?

2 A. Yes, there was an extension granted on that  
3 Order for the sole purpose of us being allowed the  
4 opportunity to make a deal with Marathon Oil Company,  
5 and others.

6 Q. And were you able to come to terms with  
7 Marathon during that extended --

8 A. They elected not to negotiate.

9 Q. And they went nonconsent, did they not?

10 A. They went nonconsent.

11 Q. Now, in your recent discussions with  
12 Marathon's landman, have they indicated that they're  
13 willing to participate in a Morrow test?

14 A. Their landman and land manager, Mr. Wayne  
15 Ransbottom -- he had indicated that management would  
16 not allow them to participate in a Morrow or Atoka test  
17 well whatsoever, anyway.

18 Q. Did they indicate whether they had funds  
19 budgeted to participate in a Morrow test?

20 A. They've indicated they had no funds for such  
21 a well.

22 Q. Finally, you've already said that there was a  
23 pooling for multiple zones. Did Marathon indicate that  
24 they would farm out but only as to limited formations?

25 A. Right, they indicated that they would grant



1 us a farmout. However, that farmout agreement would be  
2 limited only to the Atoka and Morrow formations.

3 We need additional zones to reduce economic  
4 risk for these Morrow test wells, and these are the  
5 same zones in which we have obtained farmouts from the  
6 other -- or other interest owners, or purchased  
7 assignments, whatever, in the wellbore, where the well  
8 is actually located.

9 Q. And now Exhibit Number 6, is that a copy of  
10 Mewbourne's AFE for this proposed well?

11 A. Exhibit Number 6 is the alleged AFE. It is  
12 the Turkey Tract -- It says at the top, Turkey Tract 15  
13 State Number 2. It is an AFE, estimated well costs for  
14 a Morrow test well to be drilled to an approximate  
15 total depth of 11,000 feet at a location 1980 feet from  
16 the east line and 1500 feet from the south line of this  
17 Section 15 of Township 18 South -- it says Range 27  
18 East, however that should be Range 28 East.  
19 Typographical error there.

20 It details well costs, in other words.

21 Q. Was an AFE submitted to Marathon regarding  
22 the offset well, the Turkey Tract 15 State Number 1?

23 A. That is correct.

24 Q. To the best of your recollection, are those  
25 numbers similar?

1           A.     These numbers should be in line with those  
2     numbers for the Turkey Tract 15 State Number 1 well.

3           Q.     In your opinion, have you made a good-faith  
4     effort to -- or has Mewbourne made a good-faith effort  
5     to obtain the voluntary joinder of Marathon in this  
6     proposed well?

7           MR. KELLAHIN:  Objection, Mr. Examiner.  
8     That's the conclusion we're here to debate and have you  
9     resolve for us.  It's unnecessary for this witness to  
10    attempt to bolster his own testimony with that  
11    gratuitous conclusion.

12          MR. BRUCE:  He's an expert, and he's entitled  
13    to give his opinion.

14          EXAMINER CATANACH:  I'll allow it.

15          MR. STOVALL:  I'll bet we know what his  
16    opinion is.

17          THE WITNESS:  I believe we've gone way beyond  
18    normal negotiation procedures with Marathon.  I've made  
19    a good-faith effort with them.  Our track record with  
20    them thus far, they will not make a decision, they  
21    cannot drill a Morrow test well with us.  That's all I  
22    can say.

23          Q.     (By Mr. Bruce)  And is Exhibit 3 your  
24    affidavit of notice regarding notice of this hearing,  
25    as well as -- notice of the compulsory pooling portion,

1 as well as notice of the unorthodox aspect of it?

2 A. That's correct.

3 MR. BRUCE: Mr. Examiner, at this time I  
4 would move the admission of Exhibits 3, 5, 5A and 6.

5 MR. KELLAHIN: I have an objection as to  
6 Exhibit 6, Mr. Examiner.

7 EXAMINER CATANACH: And what is that  
8 objection, Mr. Kellahin?

9 MR. KELLAHIN: If Mr. Haden is testifying  
10 that to his knowledge as a landman this is the AFE  
11 utilized by his company for this case, then it is  
12 admissible for that purpose.

13 But if Mr. Bruce is intending for this  
14 witness to authenticate that this is a reasonable AFE  
15 for you to use for the pooling purposes, we object, and  
16 we will seek to have the drilling engineer that  
17 prepared this testify before it is admitted for that  
18 purpose.

19 MR. BRUCE: We are only, for Mr. Haden's  
20 purposes, seeking to have it admitted to show that this  
21 is the AFE that was submitted to Marathon.

22 EXAMINER CATANACH: Withdraw your objection?

23 MR. KELLAHIN: No, sir.

24 MR. STOVALL: In other words, Mr. Kellahin,  
25 if I -- Let me make sure I understand your objection

1 correctly. Your objection is not to the document as  
2 being an AFE that might have been submitted; your  
3 objection is to the substantive reasonableness of the  
4 dollar amounts contained in the AFE?

5 MR. KELLAHIN: Exactly.

6 MR. STOVALL: Okay. Well, I think that --

7 MR. KELLAHIN: It can be admitted at this  
8 point for a limited purpose.

9 MR. STOVALL: It can be admitted -- I think  
10 we understand that it can be admitted with the  
11 understanding that Marathon -- that Mr. Haden is not  
12 testifying to anything more than perhaps this is  
13 similar to other AFEs and that it is...

14 Well, let me ask you a question, Mr. Haden.

15 THE WITNESS: Yes, sir.

16 MR. STOVALL: You referred to this when you  
17 talked out as "the alleged AFE". I don't quite know  
18 what it's alleged --

19 THE WITNESS: The alleged AFE which Mr.  
20 Kellahin says we did not submit to Marathon.

21 MR. STOVALL: So you're -- Are you offering  
22 this as the AFE which you did not submit to Marathon?

23 THE WITNESS: No, sir, that is not what I'm  
24 getting around to. Obviously I did not prepare this  
25 AFE.

1 MR. STOVALL: Now, don't worry about the  
2 numbers on it; that's not the issue.

3 THE WITNESS: Okay.

4 MR. STOVALL: Mr. Bruce, would you like to  
5 take him back and go through --

6 Q. (By Mr. Bruce) I will just simply ask you,  
7 Mr. Haden, is this the AFE for the Turkey Tract 15  
8 Number 2 which you submitted to Marathon?

9 A. That's correct.

10 MR. STOVALL: In that case, I think it can be  
11 admitted for that purpose.

12 EXAMINER CATANACH: Exhibits 3, 5, 5A and 6  
13 will be admitted as evidence at this time.

14 Mr. Kellahin?

15 CROSS-EXAMINATION

16 BY MR. KELLAHIN:

17 Q. Mr. Haden, let me talk about the AFE.

18 A. Yes, sir.

19 Q. Exhibit 6 was included in the package of  
20 exhibits that you provided Mr. Bruce on December 17 and  
21 for which I was given a copy?

22 A. As far as I know, that's correct.

23 Q. All right. And by that --

24 MR. STOVALL: Excuse me, which date did you  
25 say?

1 MR. KELLAHIN: I believe it was the 17th of  
2 December.

3 MR. STOVALL: Okay, I thought you just said  
4 November, that's what threw me off. Either I misheard  
5 or -- You mean December.

6 MR. KELLAHIN: Let me try again.

7 MR. STOVALL: Okay.

8 Q. (By Mr. Kellahin) The Thursday hearing in  
9 December, which my recollection was the 17th of  
10 December --

11 A. Yes, sir.

12 Q. -- the AFE, Exhibit 6 that we're discussing,  
13 prior to that date you had not transmitted the AFE to  
14 Marathon, correct?

15 A. That's correct.

16 Q. All right. Subsequent to the --

17 A. Excuse me, for this particular well.

18 Q. East half of 15?

19 A. Right.

20 Q. Okay. The submittal of that AFE took place  
21 insofar as it was included in the package of hearing  
22 exhibits you provided to Mr. Bruce, who gave it to me  
23 on the 17th of December?

24 A. Could you run that by again?

25 Q. Yeah, me too.

1 Prior to the 17th of December, Marathon did  
2 not have a copy of this AFE?

3 A. As far as I know, that's also correct.

4 Q. All right. And they got it as a result of  
5 you giving it to me through Mr. Bruce the date of the  
6 last hearing?

7 A. That's not correct.

8 Q. Okay, it was not included in that package?

9 A. It was included in that package, but I don't  
10 know how they first got that AFE.

11 Q. Okay.

12 A. As set forth in my exhibits, I believe it's  
13 Exhibit 5A.

14 Q. Uh-huh.

15 A. There's a certified mail return receipt  
16 requested, dated December 18th. This is where I had  
17 forwarded this AFE to Randal Wilson.

18 Q. Okay.

19 A. I don't know if he had gotten the package  
20 prior to me sending this letter; that's what I'm  
21 saying.

22 Q. All right. The hearing is the 17th. It's  
23 the day before you write the letter. One way the  
24 exhibit got to Marathon is if it was given to me on the  
25 17th, okay?

1           A.    That could have been one way.

2           Q.    All right.  After that date, did you forward  
3 an AFE to Marathon for the east half of Section 15?

4           A.    Yes, sir, as stated previously.

5           Q.    And that is by the December 18th, 1992,  
6 letter?

7           A.    That's correct.

8           Q.    Okay.  What do your records indicate to be  
9 the first date that you requested either the Division  
10 directly or through Mr. Bruce the docketing of the  
11 pooling case for the east half of 15?

12          A.    I'm sure it was 30 days prior, or  
13 approximately 30 days prior, to the December 17th  
14 hearing.  I don't know the exact date.

15          Q.    Exhibit 3, the package of Exhibit 3, contains  
16 your affidavit regarding notice of hearing, and after  
17 the cover sheet, the third page down is a letter dated  
18 November 16th, over Mr. Bruce's signature to Mr. Wilson  
19 of Marathon by certified mail, sending notification to  
20 him of the hearing for compulsory pooling.  Do you find  
21 that?

22               MR. STOVALL:  Mr. Kellahin, you're looking at  
23 Exhibit 3?

24               MR. KELLAHIN:  Yes, sir, Exhibit 3.  If  
25 you'll turn to the --



1 MR. BRUCE: That was our -- If I can --

2 MR. STOVALL: Exhibit 3 is -- Let me make  
3 sure we're looking at the right exhibit first, Mr.  
4 Bruce.

5 MR. BRUCE: Yes, Exhibit 3, what happened is,  
6 I sent a letter, Mr. Examiner, to the force-poolers.  
7 Marathon purportedly didn't get it for several weeks,  
8 so we re-sent notice.

9 The copy that Mr. Kellahin has was the prior  
10 Exhibit 3.

11 The Exhibit 3 that you have in front of you,  
12 and which I'll give to Mr. Kellahin there, contains the  
13 later notice exhibits. You don't have in front of you  
14 what Mr. Kellahin had in the prior hearing.

15 MR. STOVALL: That's why I couldn't find it.

16 MR. KELLAHIN: I'm sorry for the confusion.

17 Q. (By Mr. Kellahin) Regardless of where we  
18 find the exhibit, Mr. Haden --

19 A. Right.

20 Q. -- am I correct in finding that based upon  
21 Mewbourne's efforts to establish a pooling application,  
22 the first date for which notice was attempted to be  
23 sent of the pooling is November 16th?

24 A. I still have not seen that letter.

25 Q. All right, sir.

1           A.    This appears to be the letter by Mr. Bruce  
2 wherein he had sent this along with a copy of the  
3 Application out to the poolees, dated November 16th,  
4 1992.

5           Q.    With regards to this pooling case, Mr. Haden  
6 is it your responsibility for Mewbourne to initiate an  
7 application for pooling? Is that something you do as a  
8 landman?

9           A.    Yes, that's correct.

10          Q.    What do your records show to be the date that  
11 you initiated the compulsory pooling Application?

12          A.    We may have that answer momentarily.

13               MR. STOVALL: Mr. Kellahin, let's do this on  
14 the -- Since we happen to have the official case file,  
15 I have an application for compulsory pooling for the  
16 east half of Section 15, Township 18 South, Range 28  
17 East, and it has a date stamp of November 16th, 1992,  
18 for the Oil Conservation Division, and it is dated  
19 November 16th, 1992, and signed by Mr. Bruce.

20               MR. KELLAHIN: May we so stipulate in the  
21 record that that is the date of filing of the  
22 compulsory pooling case?

23               MR. BRUCE: Yes.

24               EXAMINER CATANACH: Yes, sir.

25               THE WITNESS: Would you like me to answer

1 your previous question?

2 Q. (By Mr. Kellahin) Yes, sir.

3 A. That -- I requested Mr. Bruce to prepare this  
4 Application November 10th, 1992.

5 Q. Okay. As of the date of the request,  
6 November 10th, am I correct in recognizing the  
7 following had transpired, that on October 8th you sent  
8 the multi-tract farmout request to Marathon that  
9 included the east half of 15?

10 A. That's correct.

11 Q. And that by letter of November 15th, Mr.  
12 Wilson replied back to you that Marathon was not  
13 interested in the multi-tract farmout? Did I correctly  
14 state that?

15 A. I believe that's November 5th, their letter.

16 Q. Yes, sir, November -- What did I say?

17 A. Fifteenth.

18 Q. November 5th is the date of their letter.

19 And then on November 10th, you initiate  
20 force-pooling activity?

21 A. That's correct.

22 Q. Exhibit 5B, which is Mewbourne's letter to  
23 Marathon dated January 6th of 1993 -- Do you have a  
24 copy of that?

25 EXAMINER CATANACH: Dated what, Mr. Kellahin?

1 MR. KELLAHIN: January 6th, 1993.

2 THE WITNESS: Yes, sir, this is a letter sent  
3 to Marathon Oil Company by our district exploration  
4 manager, and he will expound upon this letter in later  
5 testimony.

6 Q. (By Mr. Kellahin) Have you received any  
7 written response from Marathon to the January 6th,  
8 1993, letter at this point?

9 A. No written response. Mr. Waits, again, our  
10 exploration manager, will expound upon the results of  
11 this letter.

12 MR. KELLAHIN: That concludes my examination  
13 of Mr. Haden.

14 MR. STOVALL: I need to go back to one thing  
15 on exhibits before I get into questions.

16 Mr. Bruce, the Exhibit 3 which the Division  
17 has --

18 MR. BRUCE: Yeah.

19 MR. STOVALL: -- and the letter which appears  
20 to be of interest, specifically the letter to Marathon  
21 which you sent to Marathon, dated December 18th --

22 MR. BRUCE: Uh-huh.

23 MR. STOVALL: -- the return receipt card has  
24 been stapled to the front of it, and we can't see what  
25 the letter says. So I need to get --

1 MR. BRUCE: Okay, let me get --

2 MR. STOVALL: Look at it now, and then  
3 probably on all of these letters you're going to want  
4 to do a copy without the card, yeah.

5 We'll get this back to you to get copies of  
6 the actual content of the letter.

7 EXAMINATION

8 BY MR. STOVALL:

9 Q. Mr. Haden, how many wells have you force-  
10 pooled Marathon in? Let's say within the last couple  
11 of -- keep it narrowed down. I mean, has it been one  
12 or two? Are we talking about the only wells? Or are  
13 we talking half a dozen or...

14 If you don't know, say so, please.

15 I'm more interested in the range than  
16 specific numbers.

17 A. Maybe I can get this information from our  
18 exploration manager. Can I do that?

19 MR. KELLAHIN: If this witness doesn't know,  
20 he ought to tell you he doesn't know, Mr. Examiner.

21 THE WITNESS: I know of at least two. This  
22 is the Diamond A 35 Number 1 well, which is an offset  
23 to the Diamond A 27 Number 1 well, which is a pending  
24 case.

25 Also the Turkey Tract 15 State Number 1 well,

1 which we've been discussing.

2 Q. (By Mr. Stovall) Okay, the Turkey Tract is  
3 the one that's being drilled now?

4 A. Yes, sir.

5 MR. BRUCE: This is the Number 2.

6 THE WITNESS: Yeah.

7 MR. STOVALL: This is the Number -- Oh.

8 MR. BRUCE: The Number 1 is being drilled,  
9 and this is the Number 2.

10 Q. (By Mr. Stovall) Okay. And the Diamond A 27  
11 is another -- Is that the other case that's on today's  
12 docket?

13 A. Yes, sir, that's right.

14 Q. Okay. Let me ask you the question a  
15 different way for your information, you do know it.

16 How many -- Can you remember whether there's  
17 been a large number of occasions which you personally  
18 have negotiated with Marathon in the last couple of  
19 years, or -- What's your personal experience with  
20 Marathon?

21 A. My personal experience, no, there has not  
22 been a large number of occasions, but the only reason  
23 for that is they were not involved in the land in which  
24 we were drilling.

25 Q. Well, I mean, that makes sense. That's fine,

1       yeah. That's kind of what the question was, actually.

2           A.     Right.

3           MR. STOVALL: Before I ask any more  
4 questions, I'd like to visit with you outside for just  
5 a minute.

6           (Thereupon, a recess was taken at 10:25 a.m.)

7           (The following proceedings had at 10:29 a.m.)

8           EXAMINER CATANACH: Are you guys done?  
9 Just a few questions.

10   EXAMINATION

11       BY EXAMINER CATANACH:

12           Q.     Mr. Haden, the letter to Marathon dated  
13 October 7th was just a farmout proposal. It did not  
14 contain any other options for Marathon; is that  
15 correct?

16           A.     That's correct. However, we phoned -- we --  
17 I had told Mr. Wilson that we would like them to join,  
18 or they could sell their interest to us.

19                   All of these lands listed in that multi-tract  
20 farmout proposal are lands in which we plan to drill,  
21 and this involves other sections, that it's probably  
22 going to be subject to force-pooling also, same deal,  
23 no decision.

24           MR. STOVALL: Wait a minute, Mr. Haden. They  
25 gave you a decision.

1 THE WITNESS: Yes, a "no" decision.

2 MR. STOVALL: Well, that sounds like -- Oh,  
3 as opposed to no decision being made; is that what  
4 you're --

5 THE WITNESS: Right.

6 MR. STOVALL: Okay.

7 Q. (By Examiner Catanach) Again, back to the  
8 October 7th letter, did that letter or that proposal  
9 have any information as to the drilling of the well in  
10 this section, in Section 15? Any specific information?

11 A. They all indicated that they would be at  
12 locations of Mewbourne's choice.

13 These are for Morrow test wells, under -- I  
14 describe tracts 1 and 2, which would be subject to  
15 continuous development.

16 FURTHER EXAMINATION

17 BY MR. STOVALL:

18 Q. Mr. Haden, does a multi-well, multi-tract  
19 farmout proposal, to you, mean a specific invitation to  
20 join a specific well on a specific proration unit? Are  
21 they the same, in your opinion as a professional  
22 landman?

23 A. In that respect, no, that's...

24 Q. Am I correct as I look through these  
25 exhibits, or did I miss something, that the first time



1 that you actually wrote a letter to Marathon saying,  
2 Would you like to join in this well, please join us in  
3 this well, was yesterday?

4 A. No, sir.

5 Q. When was the first time you actually wrote a  
6 letter to Marathon saying, Please join us in this  
7 specific well, and here's the AFE for --

8 A. December 18th.

9 Q. Let me find that letter.

10 A. That's under Exhibit --

11 MR. BRUCE: Exhibit 5 --

12 MR. STOVALL: Oh, okay.

13 MR. BRUCE: 5A.

14 MR. STOVALL: 5A? I've gotten my exhibits  
15 out of order here.

16 THE WITNESS: At the same time this AFE was  
17 submitted to them, this is when Mr. Kellahin obtained  
18 the geological information.

19 Q. (By Mr. Stovall) And that was the day after  
20 the hearing was continued --

21 A. That's correct.

22 Q. -- was the first time you sent a written  
23 offer to Marathon to join the well with an AFE?

24 A. Yes, written offer, right.

25 Q. That's the first time --

1           A.    First time --

2           Q.    -- your testimony was, you sent an AFE to  
3   Marathon?

4           A.    Yes, sir, that's correct.

5           MR. STOVALL:  Mr. Examiner, I think we could  
6   go on with this, but I don't know why.

7           EXAMINER CATANACH:  Will your next witness  
8   help you out any?

9           MR. BRUCE:  Probably reiterating some of the  
10   same things.

11          But I would like to put him on briefly, if  
12   nothing else, to testify about Exhibit 6.

13          MR. KELLAHIN:  I think it's irrelevant at  
14   this point.  I'll renew my motion to dismiss this case.

15          MR. STOVALL:  Mr. Bruce, let me ask, he's  
16   your production or drilling engineer or exploration  
17   engineer?

18          MR. BRUCE:  Well, he's the exploration  
19   manager.

20          MR. STOVALL:  Is he going to testify as to  
21   the reasonableness of the exhibit?  Is that what you  
22   were thinking of?

23          MR. BRUCE:  Well, you know, if Mr. Kellahin  
24   is going to require us at some time to bring up an  
25   engineer merely to say that these costs are reasonable,

1 I'd like the opportunity to put on Mr. Waits now to  
2 testify about that.

3 MR. KELLAHIN: We're not there yet, Mr.  
4 Examiner.

5 MR. STOVALL: I think I'm inclined to agree  
6 that -- I don't think the reasonableness of the AFE is  
7 really an issue at this point.

8 And that is not to prejudge the  
9 reasonableness of it, that's --

10 MR. BRUCE: Mr. Waits can testify about  
11 Exhibit 5B, which apparently he's coming to.

12 MR. STOVALL: Well, it appears to me, Mr.  
13 Examiner, that Mewbourne did not in fact, prior to --  
14 prior to the actual original scheduled date for this  
15 hearing, and so it's prior to the filing of the  
16 Application, make any proposal to Marathon to join a  
17 specific well.

18 I'm not sure where we can go from there.

19 MR. BRUCE: Well, Mr. Examiner, if I can say  
20 something, what the statute requires is that Mewbourne  
21 attempt to get Marathon to commit its interest to the  
22 well.

23 It doesn't require submittal of an AFE or  
24 anything. There's nothing outlined, you've got to do  
25 A, B, C, D and E; you just have to attempt to get them

1 to commit their interests.

2 Mewbourne requested a farmout.

3 The answer was no.

4 Please reconsider.

5 The answer is no.

6 MR. STOVALL: "Please reconsider" came after  
7 the filing of the Application; is that correct?

8 THE WITNESS: No, sir, that's not correct.  
9 We filed the Application after I had sent my letter for  
10 reconsideration.

11 MR. STOVALL: Okay. I'm not sure that makes  
12 any difference.

13 THE WITNESS: Phone conversations --

14 MR. BRUCE: Well, we give them the data,  
15 three weeks, give them the geological data. Still  
16 can't decide.

17 We don't believe an AFE is unnecessary, Mr.  
18 Haden just testified.

19 Marathon has stated they have no money  
20 budgeted for this, for drilling a Morrow test well.

21 Marathon has stated to them they will not  
22 join in a Morrow test well.

23 We believe that Mewbourne has made the  
24 requisite good-faith effort, although I understand what  
25 you're saying, that dismissal of the case is just not

1 warranted.

2 EXAMINER CATANACH: Well, I don't think  
3 dismissal is warranted either, since Mr. Kellahin has  
4 consented to waive the reasonableness of the  
5 negotiations in exchange for a two-week continuance.

6 I think on those grounds, I think we will  
7 continue the case for two weeks.

8 MR. STOVALL: Before we take this under -- I  
9 think it needs to be stated that -- the Division --  
10 some positions on it, so you understand where we are on  
11 what constitutes reasonable negotiations.

12 The Division will not evaluate the quality of  
13 deals made, made and offered.

14 It certainly doesn't consider some company  
15 saying, We can't get a decision from management, as a  
16 valid justification for saying, We haven't negotiated  
17 yet.

18 If you submit an offer to a company and it  
19 says, Well, we have to go to headquarters, and it takes  
20 them 30 days to do it, they can move faster than that.  
21 But that doesn't appear to be the case here.

22 I'm concerned that Marathon has never, until  
23 after the hearing continued, asked to specifically join  
24 a specific well at a specific AFE cost.

25 And I think continuance is the appropriate --

1 is a gentle remedy.

2 With that, the case will be continued?

3 EXAMINER CATANACH: With that, the case will  
4 be continued for two weeks.

5 (Thereupon, these proceedings were concluded  
6 at 10:37 a.m.)

7 \* \* \*

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15 I do hereby certify that the foregoing is  
16 a complete record of the proceedings in  
the Examiner hearing of Case No. 10635,  
heard by me on January 7 1993.

17 David R. Catnach, Examiner  
18 Oil Conservation Division  
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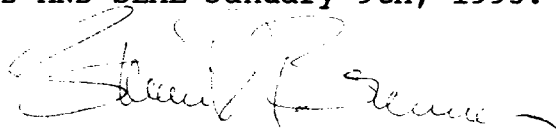
## 1 CERTIFICATE OF REPORTER

2  
3 STATE OF NEW MEXICO )  
4 ) ss.  
COUNTY OF SANTA FE )

5  
6 I, Steven T. Brenner, Certified Court  
7 Reporter and Notary Public, HEREBY CERTIFY that the  
8 foregoing transcript of proceedings before the Oil  
9 Conservation Division was reported by me; that I  
10 transcribed my notes; and that the foregoing is a true  
11 and accurate record of the proceedings.

12 I FURTHER CERTIFY that I am not a relative or  
13 employee of any of the parties or attorneys involved in  
14 this matter and that I have no personal interest in the  
15 final disposition of this matter.

16 WITNESS MY HAND AND SEAL January 9th, 1993.

17 

18 STEVEN T. BRENNER  
19 CCR No. 7

20 My commission expires: October 14, 1994  
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23  
24  
25